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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. LAWRENCE JONES, Defendant and Appellant.	B226771 (Los Angeles County Super. Ct. No. BA337608)

APPEAL from a judgment of the Superior Court of Los Angeles County, Beverly R. O'Connell, Judge. Affirmed.

Mark David Greenberg, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson and Chung L. Mar, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant Lawrence Jones of the first degree murder of Shantell Martinez and the attempted premeditated murders of Jaythia Muhammad, Laniece Dalcour, and Adrian Wade. (Pen. Code, §§ 187, subd. (a), 664/187, subd. (a).)[1] In each count, the jury found true allegations that the crime was committed for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)(C)) and that a principal intentionally discharged a handgun causing death (§ 12022.53 subds. (d) and (e)(1)). The trial court sentenced defendant to a total term of 125 years to life in state prison. He appeals from the judgment of conviction. We affirm.

BACKGROUND

The charges arose from a shooting by unidentified gunmen following a turbulent day of argument and violence involving defendant, his pregnant girlfriend, Rokeshia Quinn, and Quinn's female friends, including Chardae Johnson, Jaythia Muhammad, and Shantell Martinez. Defendant was convicted as an aider and abettor.

The following facts were undisputed. The scene of the shooting was West View Street, where Chardae Johnson and Jaythia Muhammad lived. Earlier in the day, defendant and his girlfriend, Rokeshia Quinn, argued. Defendant physically abused and threatened Quinn while driving her to locations in Los Angeles. Quinn called her good friend, Chardae Johnson, for help. Johnson and other friends ultimately located Quinn and defendant at a Sprint cellular phone store. Johnson initiated a fight with defendant over his treatment of Quinn in which Johnson received a knot on her head. Against defendant's wishes, Quinn left with Johnson and the other women. Throughout the day, Johnson and defendant exchanged

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[1] This was defendant's second trial on the charges. The jury in the first trial deadlocked and a mistrial was declared.

angry phone calls. Johnson tried to solicit her male cousin to fight defendant, but the cousin refused. A crowd gathered on West View Street in anticipation of a fight. Among the crowd were Quinn, Johnson, Jaythia Muhammad, Shantell Martinez, Laniece Dalcour, and Adrian Wade. When defendant arrived, Jaythia Muhammad confronted him and swung a small aluminum baseball bat at his head. She and defendant began to fight, and several other women joined in. After a few moments, at least two unidentified gunmen opened fire, wounding Jaythia Muhammad, Laniece Dalcour, Adrian Wade, and Shantell Martinez. Martinez, shot in the head, died three hours later.

The prosecution and defense theories of defendant's involvement in the shooting were starkly different. Relying on eyewitness accounts, the prosecution theorized that defendant, a Rollin' 60's Crip, drove to West View Street, accompanied by fellow gang members in at least two other vehicles, intending to confront and kill Chardae Johnson and perhaps other friends of Rokeshia Quinn. During the fight at that location, the gang members whom defendant had brought opened fire, resulting in the murder and attempted murders.

The defense theory was that defendant, a mere associate of the Rollin' 60's, not a member, went to West View Street alone, not intending to fight but to collect money from Rokeshia Quinn to pay for the car radio she had broken earlier in the day. He had no idea that a shooting might occur and had no gang-related motive to encourage one.

In the summary of evidence that follows, we observe the standard of appellate review, construing the evidence in the light most favorable to the judgment.

Prosecution Evidence

Defendant is a member of the Rollin' 60's Crips gang. In the morning and afternoon of July 30, 2007, he argued with his girlfriend, Rokeshia Quinn, a member of the Rimpau Boulevard Crips gang. Quinn was six months pregnant with his child.

At one point that morning, on the way back from court where defendant had driven in his gold Jaguar to pay a traffic ticket, but had left when the line was too long, Quinn broke defendant's car radio in a struggle. Later, defendant tossed Quinn's belongings outside the apartment where he lived with his grandfather, and dragged her outside by her hair. Still later, while she was at a pay phone trying to arrange a ride home, he forced her into his Jaguar and drove recklessly, saying that he was going to kill them and that he did not want the baby or to be around Quinn.

Defendant drove to a car stereo store in downtown Los Angeles to fix his car radio. When he went inside, he locked the doors with Quinn inside and put on the car alarm. Quinn went to another store and called her close friend, Chardae Johnson. She told Johnson that she and defendant were fighting and he was trying to kill her, and asked Johnson to pick her up. Before Johnson could get there, defendant located Quinn and threatened to tear up the store if she did not come out. He forced her into his car and drove off.

After Quinn's call, Johnson and another friend of Quinn's, Jaythia Muhammad, and Muhammad's sister Janae, went looking for Quinn in Jaythia's car. They went to the car stereo store in downtown Los Angeles, but defendant and Quinn had already left. The women then drove to the home of defendant's mother, where they spoke to his mother and learned Quinn was not there. While they were there, another car pulled up with three other women, Shantell Martinez,

Lakeisha and Brittany. All of the women later drove to West View Street, where Johnson and Muhammad lived.

After he left the car stereo store, defendant drove onto the freeway, opened the car door, and told Quinn to get out. With Quinn still inside the car, he then closed the door, and drove into the neighborhood claimed by his gang, the Rollin' 60's, where he stopped his car several times to ask passersby to beat Quinn up, all of whom refused. Defendant then drove to a Sprint cellular phone store (his cell phone was broken) in Culver City, at which Quinn used a display phone to call Chardae Johnson again and ask for help. Johnson arrived with Shantell Martinez in Martinez's car, accompanied by two other women (Brittany and Lakeisha).

Outside the store, Johnson confronted defendant. She said that she was tired of defendant abusing Quinn and that Quinn was going to leave with her. Defendant said that Quinn was not leaving. Johnson struck defendant and they began fighting. After they fell to the ground, defendant grabbed Johnson's hair and banged her forehead on the concrete. Eventually they were pulled apart. Johnson had a knot on her forehead from the fight.

Johnson, Quinn, and the other women got in Martinez's car. Defendant backed up his Jaguar and struck Martinez's car as the women attempted to drive off. He then followed them briefly, but they lost sight of him.

The women ultimately drove back to West View Street. Jaythia Muhammad received a phone call from defendant, and they argued about his treatment of Quinn. She heard someone else grab the phone, and then heard a male voice speaking.

On West View Street, a short cul-de-sac, there were people congregated in the parking lot of the apartment building where Johnson and Muhammad lived. Johnson telephoned defendant and told him to come to West View Street to fight

her male cousin, Chris (a West View Crip). Defendant later called back, and said that he had spoken to Chris and Chris was not going to get involved.

Later, defendant drove onto West View Street in his Jaguar and stopped at the end of the cul-de-sac. According to Jaythia Muhammad, two other vehicles, one a dark colored Avalanche SUV, and the other a green Explorer, followed defendant's car. They arrived at the same time and stopped in the middle of the street, double parked.

Laniece Dalcour, a member of the Rollin' 30's gang who was present, testified that defendant arrived with another vehicle, a black truck that contained African American males. She believed that the truck and defendant's vehicle came together.

Chardae Johnson saw two or three people in defendant's Jaguar, African American males who got out of the vehicle. She also believed that another person got out of the other car. Rokeshia Quinn testified that she saw a passenger in defendant's car when it arrived on West View.

When defendant arrived, Jaythia Muhammad walked into the street with several women. Defendant got out of his car and approached them. Muhammad called defendant a "punk bitch." According to Muhammad, defendant replied, "On 6-0 [referring to the Rollin' 60's Crips]. It's nothing. I'll fight anybody."

Muhammad swung a small, 13-inch aluminum baseball bat at defendant. They began to fight, and other women, as many as eight or nine, joined in against defendant.

Muhammad backed away and saw a man get out of the passenger side of the black Avalanche. She also saw an African American man walking back toward the black Avalanche as if holding a gun, and she then heard shooting.

Rokeshia Quinn saw the passenger from defendant's Jaguar trying to pull defendant away from the women. Then she saw two men walking up and heard shooting. She looked and saw a black male with his arm extended as if shooting, and another black male next to him whom she believed was also shooting.

Chardae Johnson saw one or two black males running from the corner and shooting. In an interview in January 2008, she told Los Angeles Police Detective James Yoshida that just before the shooting began, defendant said, "Cuz, on 60. Y'all really gonna let these bitches jump me? This is how the West Boulevards get down."

Jaythia Muhammad ran toward the end of the cul-de-sac and was struck by a bullet in the lower back. Laniece Dalcour was shot in the thigh. Adrian Wade, a man who was present, was shot in the leg. Shantell Martinez was shot in the head and died three hours later.

After the last shot, defendant ran to his car. Johnson saw one gunman enter the defendant's car on the driver's side, and another enter a second vehicle that others described as an Avalanche. Muhammad saw one gunman enter the Avalanche. The Avalanche drove off first and then defendant followed in his car.

Later, at the scene, police recovered nine .40 caliber and three .22 caliber shell casings. When interviewed by Detective Yoshida by telephone on August 6, 2007, Laniece Dalcour said that the men with defendant were "all from 6-0," referring to the Rollin' 60's Crips. When interviewed about five hours after the shooting, Rokeshia Quinn told Detective Yoshida that defendant's "friends" committed the shooting, and that they belonged to the "60 Crip" set.[2]

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[2] These statements were made in a recorded interview, which was played in its entirety for the jury.

Jaime Garcia, who did not know defendant or the victims, witnessed the shooting from his friend's house on West View Street. He saw a crowd in the middle of the cul-de-sac. He also saw defendant's Jaguar in the middle of the street in front of the third residence from the end, and an SUV parked in front of the fourth residence. Two African American men walked north, away from the SUV and toward the crowd. They were crouching and armed with guns. He did not see anyone exit the SUV. The men started firing, and after the shooting stopped, the men ran toward the Jaguar, which was moving slowly, and entered though the left rear door. Garcia did not see anyone enter the driver's door; it appeared that someone was already in the driver's seat. The SUV backed up and the Jaguar followed, both vehicles leaving at the same time.

According to Los Angeles Police Officer John Flores, a gang expert, who was asked a hypothetical question based on the facts of the instant case, the actions of women leaving with the girlfriend of a Rollin' 60's member against his wishes is disrespectful to the gang member and his gang. The member would be expected to retaliate, and it is common for a gang member to call for back-up from other members to do so.

Defense Evidence

Defendant testified that although he had tattoos pledging allegiance to the Rollin' 60's and the Neighborhood Crips alliance, and although he knew many Rollin' 60's members, he was only an associate of the Rollin' 60's and was never jumped into the gang. He did not commit any crimes for the benefit of the Rollin' 60's.

According to defendant, he and Quinn argued frequently over his seeing other women while she was pregnant. On the day of the shooting, he forced Quinn

to come with him to the radio store in downtown Los Angeles. He locked the car while she was still inside. After Quinn left the car, defendant went to look for her. He found her in another store. He asked her to come with him. He did not use force or threaten her. He drove toward his home, and did not attempt to push Quinn out of the car or solicit people to beat her up.

Defendant then drove to a Sprint store in Culver City. As he left the store, he noticed Shantell Martinez's car parked behind his. When he went to his car to get Quinn's back pack, Chardae Johnson punched him in the back of his head. They fought for a few minutes, grabbing and pushing. After the fight, Johnson entered Martinez's car and sat in the driver's seat. As defendant tried to leave, Johnson taunted him, saying that defendant wasn't going anywhere. Defendant put his car in reverse, and bumped Martinez's car. Johnson then drove off with Quinn and the others.

Defendant spoke to Chardae Johnson several times by phone, arguing. Johnson said that her cousin Chris was going to get him. But defendant had already talked to Chris, who said it was none of his business. In one conversation with Johnson, Quinn got on the phone and said she would give him money for his broken stereo and said she was on Rimpau Boulevard. Defendant drove to Quinn's home on Rimpau, but learned from Quinn's sister Brittany that Quinn was not there. He then called the cell phone Johnson and Quinn were using, and was told that they were at West View, so he drove there, parked and got out. He did not come with anyone, did not ask anyone to follow him in other cars, and did not know if anyone pulled up behind him.

There were perhaps 20 to 25 people in the street. A group of women moved toward him. One of them, Jaythia Muhammad, called him a punk and a bitch, and struck him in the face with a bat. Defendant then struck her, and other people

joined in fighting defendant. In the midst of the fighting, defendant heard gunshots coming from behind him. He went to the ground. When the shooting stopped there was chaos. Defendant got into his car alone and drove home.

Adrian Wade, defendant's childhood friend, testified that there were two other people with defendant in the cul-de-sac. Wade was shot in the right calf while running away. Defendant and others were lying down when the shooting stopped.

Quinn's younger sister, Brittany Thompson, testified that she spoke to defendant in the driveway of her home on the day of the shooting. Defendant was alone in his car and asked if Rokeshia had left any money for him.

Defendant's mother (Yvette Jones) and younger sister (Devine Edmond) testified that Chardae Johnson, Jaythia Muhammad, Janae Muhammad, Shantell Martinez, and a few other women came to their home on the day of the shooting, looking for defendant and Quinn. Jaythia Muhammad was holding a bat, Janae Muhammad had brass knuckles, and Martinez had an empty bottle.

DISCUSSION

I. *Modification of Jury Instructions*

Defendant contends that the trial court erred in modifying the jury instructions on self defense, imperfect self defense, and sudden quarrel or heat of passion, to refer to the "defendant/perpetrator" rather than simply "defendant," thereby focusing the jury's consideration on the shooter's state of mind rather than defendant's. We conclude that even assuming the modifications might have confused the jury, defendant suffered no prejudice.

As the California Supreme Court has stated: "We analyzed aiding and abetting liability in detail in *People v. McCoy* (2001) 25 Cal.4th 1111. There, we

explained that an aider and abettor's guilt 'is based on a combination of the direct perpetrator's acts and the aider and abettor's own acts and own mental state.' (*Id.* at p. 1117, italics omitted.) '"[O]nce it is proved that 'the principal has caused an *actus reus*, the liability of each of the secondary parties should be assessed according to his own *mens rea*.'"' (*Id.* at p. 1118, quoting Dressler, Understanding Criminal Law (2d ed. 1995) § 30.06[C], p. 450.) Thus, proof of aider and abettor liability requires proof in three distinct areas: (a) the direct perpetrator's actus reus—a crime committed by the direct perpetrator, (b) the aider and abettor's mens rea—knowledge of the direct perpetrator's unlawful intent and an intent to assist in achieving those unlawful ends, and (c) the aider and abettor's actus reus—conduct by the aider and abettor that in fact assists the achievement of the crime. (See *McCoy*, at p. 1117.)" (*People v. Perez* (2005) 35 Cal.4th 1219, 1225.) Further, "[t]hough *McCoy* concluded that an aider and abettor could be guilty of a greater offense than the direct perpetrator, its reasoning leads inexorably to the further conclusion that an aider and abettor's guilt may also be less than the perpetrator's." (*People v. Samaniego* (2009) 172 Cal.App.4th 1148, 1164.)

In the instant case, the trial court instructed the jury pursuant to the pattern instruction on intentional aiding and abetting (CALCRIM No. 401), which required proof that "1. The perpetrator committed the crime; [¶] 2. The defendant knew that the perpetrator intended to commit the crime; [¶] 3. Before or during the commission of the crime, the defendant intended to aid and abet the perpetrator in committing the crime; AND [¶] 4. The defendant's words or conduct did in fact aid and abet the perpetrator's commission of the crime."[3]

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[3] As we discuss in response to another of defendant's contentions, the court also instructed on the doctrine of natural and probable consequences.

The trial court also instructed the jury on murder, attempted murder, self defense, voluntary manslaughter, and attempted voluntary manslaughter using the applicable pattern instructions (CALCRIM Nos. 520, 600, 505, 570, 571, 603, and 604). However, in an attempt to tailor the instructions to the prosecution's aiding and abetting theory, as well as the defense's secondary theory of self-defense and voluntary manslaughter, the trial court modified these pattern instructions by replacing the word "defendant" with "defendant/perpetrator."

Thus, the murder instruction (CALCRIM No. 520) required proof that "1. The *defendant/perpetrator* committed an act that caused the death of another person; AND [¶] 2. When the *defendant/perpetrator* acted, he had a state of mind called malice aforethought." (Italics added.) Similarly, the attempted murder instruction required proof that "1. The *defendant/perpetrator* took direct but ineffective steps toward killing another person; AND [¶] 2. The *defendant /perpetrator* intended to kill that person." (CALCRIM No. 600, italics added.)

The modified instructions on self defense or defense of another (CALCRIM 505) required proof that "1. The *defendant/perpetrator* reasonably believed that he was in imminent danger of being killed or suffering great bodily injury. [¶] 2. The *defendant/perpetrator* reasonably believed that the immediate use of deadly force was necessary to defend against that danger. AND [¶] 3. The *defendant/perpetrator* used no more force than was reasonably necessary to defendant against that danger." (Italics added.)

Likewise, the modified voluntary manslaughter instructions based on imperfect self defense or defense of another (CALCRIM No. 571) required proof that "1. The *defendant/perpetrator* actually believed that he was in imminent danger of being killed or suffering great bodily injury; AND [¶] 2. The *defendant/perpetrator* actually believed that the immediate use of deadly force was

necessary to defend against the danger; BUT [¶] 3. At least one of those beliefs was unreasonable." (Italics added.)

In like fashion, the modified voluntary manslaughter instructions based on sudden quarrel or heat of passion (CALCRIM No. 570) stated that a killing is reduced to voluntary manslaughter if: "1. The *defendant/perpetrator* was provoked; [¶] 2. As a result of the provocation, the *defendant/perpetrator* acted rashly and under the influence of intense emotion that obscured his reasoning or judgment; AND [¶] 3. The provocation would have caused a person of average disposition to act rashly and without due deliberation, that is, from passion rather than from judgment." (Italics added.) These same modifications were made to the attempted voluntary manslaughter instructions based on imperfect self defense or defense of another (CALCRIM No. 604) and sudden quarrel or heat of passion (CALCRIM No. 603).

Assuming that these instructions might have been confusing in referring (in part) to the mental state of the perpetrator, for several reasons we conclude that defendant suffered no prejudice, whether considered under the standard of *People v. Watson* (1956) 46 Cal.2d 818, 836 (see *People v. Breverman* (1998) 19 Cal.4th 142, 178 [*Watson* standard applies to instructional error on lesser included offenses]) or *Chapman v. California* (1967) 386 U.S. 18.

First, in instructing on premeditation and deliberation in connection with murder (CALCRIM No. 521), and in connection with the allegation in the attempted murder counts that the crimes were willful, deliberate and premeditated (CALCRIM No. 601), the court did not modify the instructions to refer to the "defendant/perpetrator." Thus, the murder instruction stated: "The *defendant* is guilty of first degree murder if the People have proved that *he* acted willfully, deliberately, and with premeditation." (Italics added.) The instruction defined the

terms "willfully," "deliberately," and "with premeditation" with reference only to "the defendant": "The defendant acted *willfully* if he intended to kill. The defendant acted *deliberately* if he carefully weighed the considerations for and against his choice and, knowing the consequences, decided to kill. The defendant acted with *premeditation* if he decided to kill before committing the act that caused death." The terms were similarly defined with reference to defendant's state of mind in the instruction on the allegation of premeditated attempted murder. Thus, under the instructions, by convicting defendant of first degree murder, and finding true the allegation that the attempted murders were willful, deliberate and premeditate, the jury necessarily concluded that defendant acted with the intent to kill, and with premeditation and deliberation. These findings make it clear that the jury rejected any notion that defendant aided and abetted the actual killers with the state of mind requisite for complete self defense, imperfect self defense, or sudden quarrel or heat of passion. (See *People v. Manriquez* (2005) 37 Cal.4th 547, 582-583 [jury finding of first degree murder rendered any error in failing to instruct on imperfect self defense harmless].)

Second, the evidence that defendant acted with the state of mind required for self defense, imperfect self defense, or sudden quarrel or heat of passion was virtually nonexistent. Defendant did not testify that he acted in the belief that he was in danger, or that he acted as the result of sudden quarrel or heat of passion. To the contrary, he denied any connection with the shooters and any instigation of the shooting.

Third, the primary defense theory was consistent with defendant's testimony: defendant was a mere associate of the Rollin' 60's, not a true member of the gang; he went to West View Street alone, not intending to fight but to collect money from Rokeshia Quinn to pay for the car radio she had broken earlier in the

day; he had no idea that a shooting might occur and had no gang-related motive to encourage one. The alternate theories of self defense (or defense of another), imperfect self defense (or defense of another), and sudden quarrel or heat of passion were only secondary theories briefly mentioned in defense counsel's argument. As defense counsel stated: "I'm not saying [defendant] knew these people [the shooters]. I've taken the position, [defendant] has taken the position, he didn't know who they were. He arrived by himself. He left by himself. I have an obligation to present this [voluntary manslaughter by imperfect self defense or defense of another and heat of passion] to try to explain it to you because there is some evidence, and how much weight you choose to give it, it's up to you."

Fourth, defendant actually benefitted from the modified instructions, insofar as his attorney argued a theory that would not otherwise have been available, namely, defense of another. His attorney argued: "[I]f you conclude that [defendant] had people there and other people were with him, and that they saw that all of a sudden he was getting jumped, and they rashly, pulled their guns out and started firing. The shooters would be responsible, would act under the heat of passion, or this notion of self defense of another, and therefore reduce[] what otherwise would be a killing [*sic*] to voluntary manslaughter."

Finally, on this record, it is difficult to imagine a scenario in which defendant would have been entitled to claim self defense, imperfect self defense, or heat of passion while in a fight with eight or more women, and the actual shooters, witnessing that fight, would not have been entitled to claim defense of another, imperfect defense of another or heat of passion. In other words, even if the jury focused on the mental state of the shooters, the jury's rejection of the notion that the shooters acted in complete or imperfect defense of another or in the heat of

passion, suggests that had they focused on defendant's state of mind, his alternative defense would have been rejected as well.

For all these reasons we conclude that even if the jury instructions were confusing in referring to the "defendant/perpetrator," defendant suffered no prejudice.

II. *Natural and Probable Consequences Doctrine*

Defendant acknowledges that *McCoy, supra*, expressly did not consider the natural and probable consequences doctrine. Nonetheless, defendant contends, as best we understand him, that the rationale of *McCoy* compels the conclusion that the natural and probable consequences doctrine is no longer viable, because it premises aiding and abetting liability on the mental state of the actual perpetrator rather than the defendant. According to defendant, "the necessary implication of *McCoy* is that indirect aiding and abetting [through the natural and probable consequences doctrine] has no application to the mental states involved in criminal homicide."

We do not agree that *McCoy* has any effect on the validity of the natural and probable consequences doctrine, because, unlike direct aiding and abetting considered in *McCoy*, the natural and probable consequences doctrine is a species of liability dependent not on the subjective mental state of the aider and abettor, but rather on "'whether, under all of the circumstances presented, a reasonable person in the defendant's position would have or should have known that the charged offense was a reasonably foreseeable consequence of the act aided and abetted by the defendant.' [Citation.]" (*People v. Caesar* (2008) 167 Cal.App.4th 1050, 1058, disapproved on another ground in *People v. Superior Court* (2010) 48 Cal.4th 1, 18.)

The analysis of the court of appeal in *People v. Canizalez* (2011) 197 Cal.App.4th 832, 852, with which we agree, dispels defendant's contention: "Aider and abettor culpability under the natural and probable consequences doctrine for a nontarget, or unintended, offense committed in the course of committing a target offense has a different theoretical underpinning than aiding and abetting a target crime. Aider and abettor culpability for the target offense is based upon the intent of the aider and abettor to assist the direct perpetrator commit the target offense. By its very nature, aider and abettor culpability under the natural and probable consequences doctrine is not premised upon the intention of the aider and abettor to commit the nontarget offense because the nontarget offense was not intended at all. It imposes vicarious liability for any offense committed by the direct perpetrator that is a natural and probable consequence of the target offense. [Citation.] Because the nontarget offense is unintended, the mens rea of the aider and abettor with respect to that offense is irrelevant and culpability is imposed simply because a reasonable person could have foreseen the commission of the nontarget crime. It follows that the aider and abettor will always be 'equally guilty' with the direct perpetrator of an unintended crime that is the natural and probable consequence of the intended crime." In short, the analysis in *McCoy* relating to direct aiding and abetting has no application to the natural and probable consequences doctrine.

III. *Merger Doctrine*

In the instant case, the target offenses on which the jury was instructed for application of the natural and probable consequences doctrine were three misdemeanors: disturbing the peace, assault, and battery. Relying primarily on *People v. Chun* (2009) 45 Cal.4th 1172, 1179, defendant contends that it was a

violation of due process and equal protection to instruct on the natural and probable consequences doctrine based on these assaultive-type crimes. He contends, in substance, that the merger doctrine bars liability, because assaultive-type crimes are an integral part of, and merge into, the murder. We disagree.

In *Chun*, the defendant was one of four people in a Honda stopped at a traffic light. "[G]unfire erupted from the Honda" toward a Mitsubishi that was also stopped at the light; a passenger in the Mitsubishi was killed and two other people in that car were wounded. (*Chun, supra,* 45 Cal.4th at p. 1179.) "The prosecution sought a first degree murder conviction. The court also instructed the jury on second degree felony murder based on shooting at an occupied motor vehicle (§ 246) either directly or as an aider and abettor. The jury found defendant guilty of second degree murder." (*Ibid.*)

The California Supreme Court concluded the trial court erred by instructing the jury on felony murder as a theory of second degree murder. (*Chun, supra,* 45 Cal.4th at p. 1201.) The *Chun* court explained that when "the underlying felony is assaultive in nature, such as a violation of section 246 or section 246.3, we now conclude that the felony merges with the homicide and cannot be the basis of a felony-murder instruction." (*Id.* at p. 1200.) The court held that "all assaultive-type crimes, such as a violation of section 246, merge with the charged homicide and cannot be the basis for a second degree felony-murder instruction." (*Id.* at p. 1178.)

Chun does not apply here for several reasons. First, *Chun* involved the felony murder rule, which has no application to the present case. Second, in *Chun,* the court held that a defendant cannot be convicted of second degree felony-murder on the basis of aiding and abetting an assaultive crime. (*Ibid.*) The court did not address the application of the natural and probable consequences doctrine,

which "operates independently of the second degree felony-murder rule." (*People v. Karapetyan* (2006) 140 Cal.App.4th 1172, 1178.) "The natural and probable consequences doctrine does not merge all assaults into the felony-murder rule. Rather, it is a theory of liability for murder that applies when the assault has the foreseeable result of death. For aider and abettor liability, it is the intention to further the acts of another that creates criminal liability and not the felony-murder rule. [Citation.]" (*Id.* at p. 1178.)

Third, courts before and after *Chun* have affirmed convictions for aiding and abetting assaults with a deadly weapon that resulted in murder. (*Karapetyan, supra*, 140 Cal.App.4th at p. 1178; *People v. Francisco* (1994) 22 Cal.App.4th 1180, 1189-1190; *People v. Ayala* (2010) 181 Cal.App.4th 1440, 1450.)

For these reasons, defendant's claim is not well taken.

DISPOSITION

The judgment is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J. SUZUKAWA, J.